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February 10, 2020

**VIA ELECTRONIC FILING**

The Honorable Jocelyn Boyd  
Chief Clerk / Executive Director  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, SC 29210

Re: Enrique McMilion, Jr. v Duke Energy Carolinas, LLC  
Docket No. 2019-331-E

Dear Ms. Boyd:

I am filing this letter on behalf of Duke Energy Carolinas, LLC (the “Company”) in opposition to Complainant’s recent filing with the Commission docketed as “Letter Requesting for an Extension of Time” on February 6, 2020, in the above-referenced proceeding. This is the third proceeding initiated by Complainant, the first of which dates back to December 2018. Complainant has had ample opportunity to specify his complaint against the Company and respond to the Company, and has, in fact, already done so. The Company believes that this proceeding is now ripe for final Commission action.

In Docket No. 2018-379-E, on December 3, 2018, Mr. McMilion filed a complaint related to smart meters (“First Complaint”). The Company filed a motion to dismiss the complaint on January 10, 2019. In Order No. 2019-95, the Commission directed Mr. McMilion to file written testimony, along with his legal argument opposing the Company’s motion to dismiss, and directed the Company to file testimony in reply to Mr. McMilion’s filings. The Company filed testimony on March 1, 2019. On June 12, 2019, the Commission issued Order No. 2019-427, dismissing the First Complaint.

In Docket No. 2019-230-E, on June 18, 2019—six days after the First Complaint was dismissed—Mr. McMilion filed another complaint related to smart meters (“Second Complaint”). The Company filed a motion to dismiss the complaint on July 3, 2019. On September 13, 2019, following a sixty-day extension, Mr. McMilion filed a response to the Company’s motion. The Company filed a reply on September 18, 2019. On September 25, 2019, the Commission issued Order No. 2019-686, dismissing the Second Complaint. Thereafter, Mr. McMilion filed a request for reconsideration, to which the Company filed a response. On October 9, 2019, the Commission issued Order No. 2019-724, denying the request for reconsideration.



In Docket No. 2019-331-E, on October 15, 2019—six days after the request for reconsideration related to the Second Complaint was denied—Mr. McMilion filed yet another complaint related to smart meters (“Third Complaint”). The Company filed a motion to dismiss the complaint on November 14, 2019. Mr. McMilion filed a motion to strike the Company’s motion, to which the Company filed a response. Mr. McMilion then filed a further response that included a request for a 120-day extension to file testimony. In Order No. 2019-822, the Commission granted Mr. McMilion an extension to January 8, 2020 to file testimony and/or an amended complaint. The Commission directed in that order that “[a]t that time, Duke may withdraw or renew its motion to dismiss.” Mr. McMilion made a filing in the docket on January 8, 2020, and the Company filed a letter renewing its motion to dismiss on January 28, 2020. On February 6, 2020—14 months after the First Complaint was filed—Mr. McMilion filed a request for an extension of four weeks “to file a motion in opposition regarding defendants motion to dismiss,” which had been filed by the Company in November 2019.

The Commission’s rules are extremely clear with regard to the timing requirements that apply in complaint proceedings. Once a motion has been filed pursuant to S.C. Code Ann. Regs. 103-829(A), responses are due within ten days. The Company’s motion to dismiss the Third Complaint was filed on November 14, 2019. Eighty-five days later—or more than eight times the period allotted by the Commission’s regulations—Mr. McMilion requests a four-week extension. Additionally, Mr. McMilion has made filings in this proceeding on November 18, 2019, December 2, 2019, January 8, 2020, and February 6, 2020. There is simply no need for additional time for a further response. The Company would also note that the Commission’s complaint process is not to be used for the purposes of delay, including delaying installation of the Company’s metering equipment.<sup>1</sup>

The Company respectfully requests final disposition of this proceeding. Mr. McMilion has already been afforded multiple “bites at the apple,” and has been given ample opportunity to articulate and support his claims, both in this proceeding and in the previous two proceedings.<sup>2</sup> The Company and the Commission are expending

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<sup>1</sup> See SCRCP 11(a) (“The written or electronic signature of an attorney or party constitutes a certificate by him. . . that it is not interposed for delay.”); see *generally* Order No. 2020-33, Docket No. 2019-351-E (Jan. 8, 2020) (“The Commission’s complaint process exists to adjudicate disputes or claims, not to create delay for customers who are subject to disconnection because they failed to pay their bill.”).

<sup>2</sup> “Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” *Judy v. Judy*, 712 S.E.2d 408, 413 (S.C. 2011); see *also* Order No. 2018-491, Docket No. 2018-171-E (July 11, 2018) (“Ms. Lutz’s new complaint attempts to relitigate the



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February 10, 2020  
Page: 3

significant resources in their repeated and ongoing dealings with Complainant, and judicial economy would be best served by final disposition.

Inasmuch as the Company believes that Complainant has been afforded ample opportunity, both in this proceeding and in the previous two proceedings, to cogently state and support his positions, the Company respectfully renews its request that the Commission dismiss the above-captioned matter with prejudice, and requests that Complainant be admonished not to make filings with the Commission simply to interpose delay.

Thank you for your consideration of this letter.

Kind regards,

Sam Wellborn

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cc w/enc: Enrique McMilion, Jr., (via email and US Mail)  
Jeffrey M. Nelson, ORS Chief Legal Officer Counsel (via email)  
Becky Dover, SC Consumer Advocate (via email)  
Carri Grube Lybarker, SC Consumer Advocate (via email)  
Heather Shirley Smith, Deputy General Counsel (via email)  
Rebecca J. Dulin, Associate General Counsel (via email)

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same issues decided in Orders No. 2017-728 and 2017-775, which were issued in Docket No. 2017-291-E. Ms. Lutz failed to appeal our 2017 orders to the South Carolina Court of Appeals, and she cannot revive her claims in a new docket.”).